

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band)	PS Docket No. 06-229
)	

ORDER

Adopted: December 13, 2010

Released: December 13, 2010

By the Chief, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. By this *Order*, the Public Safety and Homeland Security Bureau (Bureau) grants the request for waiver by the City of Chesapeake, Virginia (Chesapeake) seeking an additional extension of time to pay the administrative fee due to the Public Safety Spectrum Trust (PSST) under the budget previously approved by the Bureau for administration of the long term *de facto* spectrum leases in the 700 MHz public safety broadband spectrum.¹ The Bureau previously approved a 30-day extension of the date to December 1, 2010.² With this extension, payment will now be due to the PSST by January 14, 2011.

II. BACKGROUND

2. On May 12, 2010, the Commission granted, with conditions, twenty-one waiver Petitions filed by public safety entities (Petitioners) seeking early deployment of statewide or local public safety broadband networks in the 700 MHz public safety broadband spectrum (763-768 MHz and 793-798 MHz).³ The Commission found that the Petitioners generally met the standard for waiver of the Commission's rules and that the public interest warranted allowing early deployment, so long as the conditions imposed by that order were met. Among other conditions, the Commission required that each Petitioner obtain a long term *de facto* spectrum lease from the PSST,⁴ and required that waiver recipients file certain reports on the status of their progress and deployment.⁵

¹ See City of Chesapeake, Virginia Petition for Further Waiver of Deadline to Submit Lease Administration Fee, PS Docket 06-229 (filed Nov. 30, 2010) (*Chesapeake Further Waiver Request*).

² See Implementation of a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, *Order*, DA 10-2152 (PSSB Nov. 5, 2010) (*Extension Order*).

³ See Implementation of a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, *Order*, 25 FCC Rcd 5145 (2010) (*Waiver Order*).

⁴ *Id.* at 5152-53, ¶¶ 20-24.

⁵ See *id.* at 5166, ¶ 64; see also, Office of Management and Budget Grants Emergency Approval for Information Collection Mandated Under 700 MHz Waiver Petition Order, PS Docket No. 06-229, *Public Notice*, DA 10-1097 (PSSB 2010).

3. The Commission further required the PSST to submit for approval by the Bureau a budget for any proposed administrative fees to be paid by the Petitioners under the leases.⁶ On August 11, 2010, the Bureau approved the PSST's proposed budget, finding the proposed \$15,000 first year administrative fee to be reasonable.⁷ The Bureau appended the approved budget to the *Budget Order*, which included the notation that administrative fee payments would be due 60-days after the approval of a Petitioner's lease.⁸ The Bureau approved the submitted leases on September 2, 2010.⁹ On October 29, 2010, Chesapeake filed a request seeking a 30-day extension of the 60-day deadline for submission of the administrative fee to the PSST, citing the need for additional time to complete an administrative fund reallocation.¹⁰ On November 5, 2010, the Bureau issued an order approving the request.¹¹

III. DISCUSSION

4. Chesapeake has now filed a request seeking additional time until January 14, 2011, to remit payment to the PSST. Chesapeake states that, following the Bureau's initial extension, the Chesapeake City Council approved the funding for the lease payment.¹² However, because this request was not submitted as an "emergency request," the Ordinance approving the funds will not be effective for 30-days, *i.e.*, until after December 23, 2010.¹³ Accordingly, this additional time is sought in light of this issue and due to the upcoming holidays and scheduled vacations.¹⁴ Chesapeake further asserts that the PSST has been made aware of its request.¹⁵

5. Chesapeake argues that waiver is warranted and would serve the public interest. Chesapeake characterizes the delay as "minor," and "outweighed by the benefits that the City's proposed public safety LTE network will provide to the public."¹⁶ Chesapeake further argues that it has no other option due to "controlling administrative financial requirements" that necessitate the City wait at least 30-days for the Ordinance to become effective before it can release the funds.¹⁷

⁶ *Waiver Order* at 5155, ¶ 33.

⁷ *See* Implementation of a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, *Order*, DA 10-1494 (PSHSB Aug. 11, 2010) (*Budget Order*).

⁸ *Id.* at app. A.

⁹ Public Safety and Homeland Security Bureau Approves Long Term De Facto Transfer Spectrum Lease Agreements Filed by Conditional Waiver Recipients to Establish 700 MHz Interoperable Public Safety Wireless Broadband Networks, 25 FCC Rcd 12673 (PSHSB 2010) (*Lease Approval PN*).

¹⁰ City of Chesapeake, Virginia Request for Waiver of Deadline to Submit Lease Administration Fee, PS Docket 06-229, at 1-2 (filed Oct. 29, 2010) (*Chesapeake Waiver Request*).

¹¹ *See Extension Order*.

¹² *Chesapeake Further Waiver Request* at 2.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 3.

¹⁷ *Id.*

6. To obtain a waiver of the Commission's rules, a petitioner must demonstrate either that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the waiver would be in the public interest;¹⁸ or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.¹⁹ An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.²⁰ Based on the information before us, we conclude that a grant of Chesapeake's request is warranted.

7. While we find that the limited waiver requested here is warranted under the circumstances presented by Chesapeake, we urge Chesapeake to diligently adhere to each of the conditions imposed by the *Waiver Order* to ensure timely progress. However, we expect that such circumstances should be anticipated in the future, and that deadlines will be met.

V. ORDERING CLAUSES

8. ACCORDINGLY, IT IS ORDERED, pursuant to sections 1, 4(i), 301, 303, 332, and 337 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 301, 303, 332, and 337, and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, the waiver request by Chesapeake IS GRANTED.

9. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's Rules, 47 C.F.R. §§ 0.191, 0.392, and the *Waiver Order*, 25 FCC Rcd 5145, 5155, ¶ 33 (2010).

FEDERAL COMMUNICATIONS COMMISSION

James Arden Barnett, Jr., Rear Admiral (Ret.)
Chief, Public Safety and Homeland Security Bureau

¹⁸ 47 C.F.R. § 1.925(b)(3)(i).

¹⁹ 47 C.F.R. § 1.925(b)(3)(ii).

²⁰ *WAIT Radio v. FCC*, 413 F.2d 1153, 1157 (D.C. Cir. 1969) (*WAIT Radio*), *aff'd*, 459 F.2d 1203 (1973), *cert. denied*, 409 U.S. 1027 (1972) (*citing Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)); *Birach Broad. Corp., Memorandum Opinion and Order*, 18 FCC Rcd 1414, 1415 (2003).